In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-123

IZAAK WALTON LEAGUE OF AMERICA, ET AL., PETITIONERS

v.

GEORGE W. ST. CLAIR, EA AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 497 F. 2d 849. The opinion of the district court (Pet. App. B) is reported at 353 F. Supp. 698.

JURSIDICTION

The judgment of the court of appeals was entered on May 17, 1974. The petition for a writ of certiorari was filed on August 15, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals correctly deferred consideration of the legality of proposed prospecting activities in the Boundary Waters Canoe Area, in the State of Minnesota, pending action by the United States Forest Service on the prospector's application for a permit to prospect.

STATUTE INVOLVED

The statute involved is the Wilderness Act, 78 Stat. 890, 16 U.S.C. 1131 *et seq.*, set forth in Pet. App. C at C-1 to C-15.

STATEMENT

The Izaak Walton League brought this action against a prospector and state and federal agencies to prevent prospecting by private individuals holding reserved mineral rights in the Boundary Waters Canoe Area of the Superior National Forest in northern Minnesota, on the ground that prospecting would be injurious to the wilderness character of the area. The district court enjoined officials of the United States Department of Agriculture from granting a pending application for a permit to prospect and enjoined the applicant and his successors in interest from exercising any reserved mineral rights. It also enjoined certain state officials from permitting the exercise of such rights (Pet. App. B, B-1 to B-3). The court of appeals reversed and remanded, holding that judicial review should be deferred pending action by the Forest Service on the application for a permit to prospect (Pet. App. A, A-11).

The Canoe Area comprises 1,031,204 acres along the Canadian border in the Superior National Forest in northern Minnesota. It was included in the National Wilderness System pursuant to the Wilderness Act, 16 U.S.C. 1131 *et seq.* The court of appeals described the ownership of the area as follows (Pet. App. A, A-4):

> Within the BWCA [the Canoe Area], the surface land area is owned in roughly the following percentages: United States, 71.3%; Minnesota, 26.3%; Minnesota counties, 1.4%; and private parties, 1%. This latter figure is steadily declining as more and more land passes from private to federal ownership. The ownership of the underlying mineral rights is in quite different proportions. The United States owns only 44%; the State and counties, the same 26.3% and 1.4% respectively; while the rights held by private owners amount to 28.3% of the total area.

Some of these mineral reservations were created by the deeds conveying the surface to the United States while other reservations had been previously created. Currently, the ownership of the reserved mineral rights is greatly fractionalized.[1]

The controversy was submitted to the district court upon stipulated facts. These were summarized by the court of appeals as follows (Pet. App. A, A-4 to A-5; footnote omitted):

> St. Clair [the prospector], through various lease agreements, accumulated the mineral rights in approximately 150,000 acres of BWCA land, and in 1969 had crews enter the BWCA for preliminary exploratory work. With the permission of the Forest Service, his crew established a base camp, and traveling by canoe undertook surface mineral exploration. Appar-

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[1]By virtue of the checkerboard character of state and federal ownership, a state permit would be required for private prospecting activities of any size. The State of Minnesota bars any such activities except in the event of an emergency (Pet. App. B, B-36 to B-37). The regulations in 36 C.F.R. 251.1(b)(2) require Forest Service special use permittees to comply with all applicable state laws.

> ently encouraged by the preliminary findings, St. Clair notified the Forest Service in December, 1969, of his intention to send a drill and crew into the BWCA in late December or early January, 1970, to drill four or five test holes.
>
> The Forest Service, in response, notified St. Clair that before any permit could be issued he would have to furnish the documents establishing his claimed rights, and that the Forest Service would be looking for any possible way to keep him from carrying out his planned activities in the BWCA. This lawsuit was commenced before St. Clair furnished the requested documentation; the Forest Service still has not received the necessary documents; and no administrative determination has been made as to whether a permit should be granted. There have been no additional exploratory activities during the pendency of this lawsuit.

The district court issued a memorandum decision (Pet. App. B, B-4 to B-37) in which it took "judicial notice" that mineral exploration would be destructive of the wilderness character of the Canoe Area (Pet. App. B, B-31, B-33). It also permanently enjoined federal and state officials and the named holders of reserved mineral rights from permitting or undertaking further mineral exploration or exploitation (Pet. App. B, B-1 to B-3).

The court of appeals reversed, holding (Pet. App. A, A-9):

> Rather than taking "judicial notice" that St. Clair's planned activities were incompatible with the wilderness quality of the BWCA, without a hearing and without the benefit of a Forest Service record on the question, the District Court should have stayed the proceedings until after Forest Service action on the permit application, or dismissed the case without

> prejudice to any suit commenced after final Forest Service action. Although the League's legal claims cannot be decided by the Forest Service, recourse to the courts will be available after final Forest Service action. Allowing the Forest Service to initially determine whether any mining activity will be allowed, consistent with maintaining the wilderness character of the BWCA, would provide the necessary factual record for the District Court's determination of the legal issues presented.

The court of appeals concluded (Pet. App. A, A-11):

> The cause is reversed and remanded with directions that the Forest Service be allowed to determine, upon proper application, whether a permit should be granted; and, of course, St. Clair is not at liberty to explore or prospect without a permit from the Forest Service. The District Court may, in its discretion, stay proceedings in the present suit or dismiss without prejudice to any later action.

ARGUMENT

The decision is correct and does not conflict with any decision of this Court or any other court. Moreover, review by this Court at this time would be inappropriate because no final adjudication of rights has been made.

1. Contrary to the suggestion by petitioners, the issue is not whether Congress can prohibit prospecting on federal lands. It clearly can do so. But, as the court of appeals recognized (Pet. App. A, A-8 to A-9), the Wilderness Act permits mineral prospecting and other activities in wilderness areas "if such activity is carried on in a manner compatible with the preservation of the wilderness environment." 16 U.S.C. 1133(d)(2). The Act further provides that the Secretary of Agriculture shall determine

the compatibility of the proposed activities with the wilderness character of the area involved. 16 U.S.C. 1133(d)(2), (d)(5). Under these circumstances, the court of appeals was correct in applying the doctrine of primary jurisdiction and in deferring judicial review until the Forest Service has had an opportunity to rule on St. Clair's application.

2. Moreover, at this stage, the controversy lacks elements of finality and concreteness. If following remand the Forest Service were to deny St. Clair's application, this lawsuit would be moot. On the other hand if the permit were granted, the type of prospecting which might be authorized by the Forest Service and its effect on the environment would be less speculative. Thus, the matter is not ripe for judicial review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1974.

DOJ-1974-10